

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG**

**UNITED STATES OF AMERICA ex rel.
JOSEPH SEIKEL and TERENCE
SEIKEL,**

Plaintiffs-Relators,

v.

**DAVID B. ALVAREZ, APPLIED
CONSTRUCTION SOLUTIONS, INC.,
ENERGY TRANSPORTATION LLC,
ENERGY RESOURCE GROUP, LLC,
ET360, LLC, BEAR CONTRACTING,
LLC, BEAR UTILITIES, LLC, JASON P.
HENDERSON, and JOHN DOES NOS., 1-
50, FICTITIOUS NAMES,**

Defendants.

Civ. Action No. 1:23-cv-01

REPORT OF THE PARTIES PLANNING MEETING

1. Meeting Held: Pursuant to this Court’s March 1, 2023 First Order and Notice Regarding Discovery and Scheduling Conference (“Order and Notice”), all parties who have made an appearance held a phone meeting on March 31, 2023. The Parties agreed to move the Court for a stay pending the filing of the Amended Complaint and anticipated Motions to Dismiss. *See* Dkt. 77. After the Court denied the Parties’ Motion to Stay (Dkt. 79), the Parties talked again via phone on April 13, 2023. The United States, having declined to intervene in this Action, is not a party to the litigation and was not present at either meeting. Consistent with its request and status as the real party in interest, the United States will receive this Report through ECF.

2. Initial Disclosures: In accordance with the Court's Order and Notice, the Parties will exchange initial disclosures on or before May 1, 2023.

3. Discovery Plan: The Parties agree that the scope of discovery shall include all issues related to liability, damages, and defenses raised in the pleadings. The parties initially agree that the maximum numbers of depositions and discovery requests shall be governed by Local Rule 26.01(c).

4. Referral to Magistrate: The Parties do not consent to trial by a magistrate judge.

5. Waiver of Scheduling Conference: The Parties do not request a scheduling conference.

6. Local Rule 16.01(b) and 26.06 Analysis: The parties agree that this case is complex and requires monitoring in an individualized and case-specific manner. The Parties conferred in accordance with Local Rule 26.06 and agree to conduct discovery of ESI pursuant to Rule 26.06. The parties anticipate that ESI will include electronic documents, email, attachments to email, and various spreadsheets and PowerPoint files. Except as otherwise specified, production of ESI will be made with TIFF images and load files with preserved metadata. Spreadsheets, PowerPoint files, and similar materials will be produced in their native and electronic formats along with an associated placeholder TIFF image and endorsed with a unique Bates number. The parties agree that they will prepare and seek entry of a Federal Rule of Evidence 502(d) order governing the disclosure of privileged or work product materials and a standard protective order to permit the exchange of financial and bank account information.

7. Alternative Dispute Resolution: The Parties intend to explore alternative dispute resolution and will update the Court promptly with any developments.

8. Protective Order: The Parties agree to use a protective order. A copy of the

protective order is attached for entry by the Court.

9. Scheduling Order Checklist:

	Dates Ordered Per Dkt. 74
AMENDED COMPLAINT	April 4, 2023 (filed on Docket April 12, 2023)
DEFENDANTS' RESPONSIVE PLEADING TO AMENDED COMPLAINT	May 12, 2023 (30 Days from filing of Amended Complaint)
PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION(S) TO DISMISS AMENDED COMPLAINT	June 12, 2023 (30 Days from filing of Motions to Dismiss)
	Proposed Dates:
JOIN PARTIES OR AMEND PLEADINGS	July 14, 2023
PLAINTIFF EXPERT DISCLOSURE	September 28, 2023
DEFENDANT EXPERT DISCLOSURE	September 28, 2023
COMPLETION OF DISCOVERY	November 29, 2023
MEDIATION	December 29, 2023
DISPOSITIVE MOTIONS	February 2, 2024
RESPONSE TO DISPOSITIVE MOTIONS	Within 21 days of the filing of the motion
REPLY TO DISPOSITIVE MOTIONS	Within 14 days of the filing of a Response
PRETRIAL DISCLOSURES, FED R. CIV. PRO. 26(a)3	April 1, 2024
OBJECTIONS	April 8, 2024
PROPOSED VOIR DIRE, JURY INSTRUCTIONS, VERDICT FORMS, & SPECIAL INTERROGATORIES	April 22, 2024
OBJECTIONS	April 28, 2024

MOTIONS IN LIMINE	May 13, 2024
OBJECTIONS	May 20, 2024
BIOGRAPHICAL SKETCHES	May 27, 2024
JOINT PRE-TRIAL ORDER	May 27, 2024
STIPULATION OF FACTS	June 3, 2024
FINAL PRE- TRIAL/SETTLEMENT CONFERENCE	June 3, 2024
TRIAL DATE (including number of days)	June 10, 2024, 15 trial days

Prepared and submitted by:

/s/ Anthony J. Majestro

Anthony J. Majestro, Esq. (WVSB #5165)
Powell & Majestro, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301
304-346-2889 / 304-346-2895 (f)
amajestro@powellmajestro.com

William G. Powers (*pro hac vice*)
Andrew M. Miller (*pro hac vice*)
Baron & Budd, P.C.
The Watergate
600 New Hampshire Ave., NW, 10th Floor
Washington, DC 20037
Telephone: 202.333.4562
Facsimile: 202.337.1039
wpowers@baronbudd.com
amiller@baronbudd.com

Counsel For Plaintiff-Relator

/s/ Patricia M. Kipnis

Patricia M. Kipnis (WVSB # 12896)
Bailey & Glasser LLP
923 Haddonfield Road
Suite 300
Cherry Hill, NJ 08002
Telephone: 215.274.9420
Facsimile: 202.463.2103
pkipnis@baileyglasser.com

Marc R. Weintraub (WVSB # 8055)
Bailey & Glasser LLP
360 Central Avenue, Suite 1450
St. Petersburg, FL 33701
Telephone: 727.894.6745
Facsimile: 727.894.2649
mweintraub@baileyglasser.com

Alex L. Serber (*pro hac vice*)
Bailey & Glasser LLP
1055 Thomas Jefferson St., NW
Suite 540
Washington, DC 20007
Telephone: 202.333.0740
Facsimile: 202.463.2103
aserber@baileyglasser.com

Counsel for David Alvarez, et al.

/s/ Shawn Angus Morgan

Shawn A. Morgan (WV ID #6640)
Steptoe & Johnson PLLC
40 White Oaks Boulevard
Bridgeport, WV 26330
Telephone: 304.933.8000
shawn.morgan@steptoe-johnson.com

Counsel for Jason Henderson, et al.

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2023, I caused the foregoing to be filed with the United States District Court for the Northern District of West Virginia via ECF. The foregoing was served via first class mail and electronically via email on the following:

Christopher James Prezioso
Maximillian F. Nogay
Paul W. Kaufman
United States Attorney's Office
Northern District of West Virginia
P.O. Box 591
1125 Chapline Street, Suite 3000
Wheeling, WV 26003
Phone: (304) 234-0100
Fax: (304) 234-0110

Elizabeth L. Coyne
Assistant United States Attorney
United States Attorney's Office
Eastern District of Pennsylvania
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
215-861-8447
Fax: 215-861-8618